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**Attorneys for Plaintiff**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PIG NEWTON, INC.,

Plaintiff,

-against-

THE BOARDS OF DIRECTORS OF THE  
MOTION PICTURE INDUSTRY PENSION  
PLAN, THE MOTION PICTURE INDUSTRY  
INDIVIDUAL ACCOUNT PLAN, AND THE  
MOTION PICTURE INDUSTRY HEALTH PLAN,

Defendants.

13-CIV-7312 (KPF)

ECF Case

**DECLARATION OF ELIZABETH**  
**O'LEARY IN SUPPORT OF**  
**PLAINTIFF'S MOTION FOR**  
**SUMMARY JUDGMENT**

**ELIZABETH O'LEARY**, an attorney duly admitted to the Courts of the State of New York, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an attorney with the firm of Kauff McGuire & Margolis LLP ("KMM"), attorneys for Plaintiff.
2. I have personal knowledge of the facts set forth in this declaration, which I make in support of Plaintiff's Motion for Summary Judgment.
3. On or about December 12, 2013, Andrew Griffin, a legal assistant at KMM, contacted the National Archives and Record Administration (NARA) and requested a copy of the entire United States District Court file for *La Barbera v. J.D. Collyer Equipment Corp.*, No. 98 Civ. 3818 (E.D.N.Y.). A true and correct copy of this request is

attached hereto as Exhibit A. A box containing documents from the referenced litigation was subsequently sent to KMM.

4. The documents included the collective bargaining agreement (“CBA”) and excerpted pages of the trust agreements at issue in *La Barbera*.

5. True and correct copies of excerpted pages of the Local 282, International Brotherhood of Teamsters/ Nassau-Suffolk Heavy Construction & Excavation and Asphalt Industry Contract received from NARA are attached hereto as Exhibit B.

6. True and correct copies of the excerpted pages of the Local 282 Funds Trust Agreement received from NARA are attached hereto as Exhibit C.

7. On February 21, 2014, I served Plaintiff’s First Request for the Production of Documents on Defendants (“Plaintiff’s Document Requests”). A true and correct copy of this document is attached hereto as Exhibit D.

8. Defendants produced ten different versions of the Trust Agreements in effect between 2010 and 2014 for the Motion Picture Industry Pension Plan (“Pension Plan”), the Motion Picture Industry Individual Account Plan (“IA Plan”), and the Motion Picture Industry Health Plan (“Health Plan”) (collectively, the “Plans”). Attached hereto as Exhibit E are true and correct copies of the cover pages for the Health Plan’s Trust Agreements between 2010 and 2014, which were produced by Defendants in response to Plaintiff’s Document Requests.

9. Plaintiff’s Document Requests sought documents regarding the adoption of the Controlling Employee Rules with respect to all three Plans. (*See* Exhibit D, Requests No. 7-9.) Although the Plans produced documents showing the motivation for adopting the Controlling Employee Rules for the Health Plan, no documents were

produced evidencing the need for the Controlling Employee Rules for the other two Plans.

10. Attached hereto as Exhibit F is a true and correct copy of excerpts from a June 11, 2013 letter from Howard D. Fabrick to Michael Rosenfeld and Thom Davis, Chairs of the Plans, which was produced by Defendants in response to Plaintiff's Document Requests.

11. Attached hereto as Exhibit G is a true and correct copy of a print-out of certain e-mails sent to and from Teri Smith on January 23, 2013, which was produced by Defendants in response to Plaintiff's Document Requests.

12. Attached hereto as Exhibit H is a true and correct copy of the report and minutes of a March 13, 2002 meeting of the Plans' Joint Legal Subcommittee, which was produced by Defendants in response to Plaintiff's Document Requests.

13. Attached hereto as Exhibit I is a true and correct copy of the report and minutes of a May 23, 2002 meeting of the Plans' Joint Legal Subcommittee, which was produced by Defendants in response to Plaintiff's Document Requests.

14. Attached hereto as Exhibit J is a true and correct copy of an excerpt of minutes of a November 11, 1981 meeting of the Plans' Board of Trustees, which was produced by Defendants in response to Plaintiff's Document Requests.

15. Attached hereto as Exhibit K is a true and correct copy of a letter dated August 7, 2012 from William Cole to William Zuckerman. The attached letter was also produced by Defendants in response to Plaintiff's Document Requests.

16. Attached hereto as Exhibit L is a true and correct copy of a document produced in response to Plaintiff's Document Requests and entitled "Employee-Shareholder Company Agreement" for AnEFX, Inc.

17. Attached hereto as Exhibit M is a true and correct copy of a letter from Plaintiff's counsel, submitted on behalf of all the parties in this action, to the Honorable Katherine Polk Failla. This letter, which is dated January 3, 2014, was submitted in advance of the parties' January 9, 2014 initial pretrial conference.

18. Attached hereto as Exhibit N is a true and correct copy of a letter dated October 17, 2013 from William Zuckerman to Kathryn Halford.

19. Attached hereto as Exhibit O is a true and correct copy of a print-out of e-mails sent from Shanda Zuniga on July 13, 2007, which was produced by Defendants in response to Plaintiff's Document Requests.

20. Attached hereto as Exhibit P is a true and correct copy of a print-out of excerpts from an e-mail chain between Chuck Gordon and Maria Rowena Andrada in December 2012, which was produced by Defendants in response to Plaintiff's Document Requests.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 11, 2014.

  
Elizabeth O'Leary